

SEP 27 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYBefore The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS CORPORATION)	File No. BPCT-940630KG
)	
For Construction Permit for a New)	
Television Station to Operate on)	
Channel 51, Reading, Pennsylvania)	

To: Magalie Roman Salas, Secretary
for direction to
The Honorable Richard L. Sippel
Administrative Law Judge

REPLY OF ADAMS COMMUNICATIONS CORPORATION
TO RBI OPPOSITION TO ADAMS'S "THRESHOLD SHOWING
OF UNUSUALLY POOR BROADCAST RECORD"

1. Adams Communications Corporation ("Adams") hereby submits its Reply to the Opposition of Reading Broadcasting, Inc. ("RBI") to Adams's "Threshold Showing of Unusually Poor Broadcast Record". ^{1/}

2. RBI asserts that Adams is "precluded" from presenting "character" as a comparative factor. But in its Threshold Showing Adams is not presenting "character" as a comparative factor. Rather, Adams is responding to the Commission's and the Presiding Judge's express invitations to submit information which

^{1/} A Motion for Leave to File this Reply is being tendered simultaneously herewith.

reflects a "significant failure to carry out representations made to the Commission". See Comparative Policy Statement, 1 FCC2d 393, 398 (1965); Memorandum Opinion and Order, FCC 99M-47, released August 9, 1999, ¶9. The goal of this particular inquiry is to determine whether the applicant's representations -- on the basis of which the applicant seeks a Commission license -- can or should be deemed truly reliable.

3. Here, the record compiled before the Commission by RBI's dominant principal, Micheal Parker, discloses multiple such "significant failures". Parker has been the dominant participant in two separate applicants who have been found to have engaged in fraud or deliberate deceit before the Commission.^{2/} Obviously, "fraud" and "deceit" are indicators of unreliability, particularly where the already-adjudicated "fraud" and "deceit" occurred in Commission proceedings.

4. In its Opposition, RBI suggests that the Commission's 1986 Character Policy Statement, 102 FCC2d 1179 (1986), somehow altered the Commission's previously stated concern about assuring the reliability of its applicants. RBI Opposition at 3-4. Here RBI is confusing apples and pears, jumbling similar but plainly distinct concepts. The Character Policy Statement concerns the

^{2/} RBI appears to be in denial about what the record shows. For example, at page 4 of its Opposition RBI refers to Parker's "alleged misconduct" in Mt. Baker Broadcasting Company, Inc., 3 FCC Rcd 4777 (1988) and Religious Broacasting Network, 2 FCC Rcd 6561 (ALJ 1987), aff'd in relevant part, 3 FCC Rcd 4085 (Rev. Bd. 1988). But Parker's misconduct in those cases was fully adjudicated adversely to Parker. The misconduct was long ago stripped of any claim of uncertainty or non-resolution: Parker's misconduct is, and has for more than 10 years been, well-established and adjudicated, not simply "alleged". See Crystal Communications, Inc., 12 FCC Rcd 2149, 2150 (1997).

impact of alleged, not-yet-ajudicated misconduct qua misconduct: the focus there is whether the applicant's alleged misconduct, by itself, is sufficiently egregious automatically to disqualify it from becoming a licensee. The past broadcast record component of the Comparative Policy Statement, by contrast, does not focus on "misconduct" as such, but rather on whether the applicant's history before the Commission affords any indication of whether the applicant can or should in fact be relied upon by the Commission.

5. This comparative evaluation thus does not constitute an effort to condemn particular misconduct (as would be the case where such misconduct were found in and of itself to be disqualifying). Rather, it is an effort by the Commission to assure itself that its comparative decision-making processes are based on reliable representations from reliable applicants. Thus, the comparative evaluation may include conduct which falls short of disqualifying "misconduct" but which nonetheless raises serious questions about the applicant's reliability. The comparative evaluation would also include adjudicated misconduct which raises such questions. Importantly, the focus of the comparative inquiry is the extent to which the conduct/misconduct reflects on the reliability of the applicant's representations to the Commission.

6. It is beyond dispute that Parker has twice been found to have engaged in fraudulent or deceitful conduct before the Commission. Mt. Baker; Religious Broadcasting. One of those instances resulted in an explicit determination of

disqualification.^{3/} In Adams's view, the Commission's previous adjudications concerning Parker's qualifications -- adjudications which have never been vacated or modified -- are in and of themselves sufficient to warrant disqualification of RBI. That is the gravamen of Adams's Motion to Enlarge Issues, which involves non-comparative questions and which Adams filed and is litigating separately from the Threshold Showing.

7. But separate and apart from whether the previous adjudications, by themselves, should be deemed disqualifying, the conduct at issue in those adjudications unquestionably reflects on the reliability of Parker's -- and, therefore, RBI's -- representations to the Commission. Where the applicant's history before the Commission discloses such evidence, the Commission has expressly indicated that such evidence can and should be considered in the comparative evaluation. The Commission-prescribed mechanism for introducing such evidence is the Threshold Showing of Unusually Poor Broadcast Record. See Comparative Policy Statement. The Presiding Judge himself recognized this in his August, 1999 Order, FCC 99M-47, released August 9, 1999 (¶9), when he invited the parties to submit such threshold showings.^{4/} Adams's showing was submitted in

^{3/} That determination, in Religious Broadcasting, has never been vacated or otherwise modified. It therefore remains in full force and effect. See Crystal Communications, Inc., 12 FCC Rcd 2149, 2150 (1997).

^{4/} In a footnote, RBI attempts to inject further confusion by citing references in Character Policy Statement concerning matters to be considered under the renewal expectancy issue. See RBI Opposition at n. 5. But Adams's Threshold Showing is not directed to the separate "renewal expectancy" question, but rather to the standard comparative
(continued...)

response to that invitation. ^{5/}

8. RBI also claims that Adams's Threshold Showing is "too insubstantial" to justify inquiry. This is surprising. Adams's showing is not based on guesses or speculation about some possible misconduct of questionable nature or extent. See Athens Broadcasting Co., Inc., 21 FCC2d 161, 18 RR2d 231 (1970) (inquiry into possible "unusually poor" broadcast record allowed based on allegations of, inter alia, failure to perform representations made in previous applications). Rather, it is based on, inter alia, final adjudications of "fraud" and "deceit" committed against the Commission itself. How can such final adjudications be deemed to be "insubstantial", especially for the purposes of making a threshold showing? ^{6/}

^{4/} (...continued)
issue, which the Presiding Judge has acknowledged is separate and distinct from "renewal expectancy" and governed by the Comparative Policy Statement.

^{5/} RBI also suggests that the "ten year limitation" described in the Character Policy Statement may come into play here. RBI Opposition at 6. As the Presiding Judge is aware, RBI and Adams disagree on the scope of that limitation. But whatever its scope, it is clear that that limitation would apply only to the addition of basic disqualifying issues, not the comparative questions presented by Adams in its Threshold Showing. The Comparative Policy Statement, pursuant to which Adams filed its Threshold Showing, contains no such limitation.

^{6/} RBI argues that other considerations can and should be balanced against Parker's misconduct. See Opposition at 6-7. But if any such balancing is warranted, it must be undertaken on a full evidentiary record. Saying, as RBI does, that there are other factors which the Presiding Judge may consider does not mean that Adams has not made a threshold showing; rather, it simply means that RBI believes that the adverse factors cited by Adams may be outweighed by other considerations. For the purposes of Adams's Threshold Showing, the important -- indeed, the only -- question is whether Adams has made such a showing. The question which RBI posits -- i.e., whether other factors may exist which might outweigh the adverse effects of the matters presented in Adams's Showing -- need not be addressed until

(continued...)

9. In its Threshold Showing Adams also pointed out that Parker had historical -- and, insofar as Station WTVE(TV) is concerned, on-going -- connections with two individuals, Eugene Scott and Thomas Root, whose misconduct has been the subject of extensive inquiry, and adverse conclusions, by the Commission. In its Opposition, RBI does not deny those on-going connections. Instead, RBI demurs, effectively saying "so what?"

10. With respect to Scott, RBI claims that allegations of misconduct by Scott were "never resolved" by the Commission. That is technically true of certain allegations which were designated for hearing, but it was true only because Scott's licensee, Faith Center, Inc., consistently refused to comply with discovery orders and, as a result, its renewal applications were dismissed for failure to prosecute. See, e.g., Faith Center, Inc., 82 FCC2d 1, 45 RR2d 709 (1980). While RBI tries to emphasize that Faith Center's loss of several television licenses was the result of "failure to comply with discovery requests", RBI Opposition at n. 7, RBI neglects to mention that, in dismissing the Faith Center applications, the full Commission concluded that Faith Center's failure in that regard was a result of bad faith and constituted "a grave abuse of the Commission's processes" warranting dismissal. Id. at, e.g., 48 RR2d at 734.

11. RBI would have the Presiding Judge content himself with the knowledge that the Commission presently has no outstanding

6/ (...continued)
after the scope of the comparative issue is properly deemed to include consideration of Parker's unusually poor broadcast record.

proceedings concerning Scott. But that was also the case in 1991, when Christine Shaw sought to acquire the license of International Broadcast Station KCBI (now KAIJ), Dallas. On its own motion, the Mass Media Bureau initiated an inquiry into Ms. Shaw's connections to Scott. See Adams Threshold Showing, Attachment E. Obviously, concern about Scott and his previous conduct before the Commission continued to run deep in the agency even after Scott had lost all of his licenses. RBI's effort to sugarcoat Scott's history before the Commission is remarkable for its refusal to acknowledge the nature and extent of that history.^{2/}

12. The same is true of RBI's discussion of Root. RBI does not quarrel with Adams's discussion (see Threshold Showing at ¶¶14-15) concerning the incredible depth and breadth of Root's misconduct before the Commission. Essentially, all RBI argues is that Root is not an officer, director or shareholder of RBI, and therefore his past misconduct is irrelevant. But the full Commission has held, with respect to Root, that inquiry into "whether Root may potentially influence the licensee's affairs" is warranted even where Root has resigned officerships and directorships and relinquished his ownership of the licensee, and even where Root's misconduct did not involve that particular licensee. The Petroleum V. Nasby Corporation, 11 FCC Rcd 3494,

^{2/} RBI's argument also includes the observation that Scott's programming is currently on the air, suggesting that there is no problem with it. In so arguing, though, RBI fails to acknowledge that, at least according to Scott's website listing (see Adams's Threshold Showing at Attachment C), three of the ten U.S. television stations which air Scott programming are associated with Parker.

3995, 2 CR 1103, 1105 (1996). ^{8/}

13. In its Opposition, RBI acknowledges that Root has been actively involved in RBI's affairs for more than four years, first as an "independent contractor", and, since August 1, 1996, as "special assistant" to RBI's president, Parker. See RBI Opposition, Exhibit A. The precise scope of Root's authority and responsibilities in these general roles is not disclosed by RBI, which merely describes some, but not necessarily all, of the services Root has provided and continues to provide. While Frank McCracken, an RBI director, states that Root does not have "any decision-making authority" in certain aspects of RBI's operations, Mr. McCracken does not state that Root -- who serves as "special assistant" to RBI's chief executive officer -- is not in a position to "potentially influence the licensee's affairs", see Nasby, supra. ^{9/}

14. With the ambiguous title of "special assistant to the president", Root's position cannot be seen to be narrowly circumscribed or delimited. The two RBI declarants, Messrs.

^{8/} In Nasby, Root had relinquished all official positions and ownership interests in the licensee. While certain family members retained such positions and interests, the Commission acknowledged that family relationships were not sufficient to warrant an inference that the family members were acting in concert. Nevertheless, the Commission insisted that a thorough factual record be developed as to Root's relationship to the licensee "then, now, and in the future." 11 FCC Rcd at 3496. In the instant case, while RBI has acknowledged that Root is a "special assistant" to RBI's president, RBI has not disclosed how Root's relationship with the station arose, how that relationship has operated, or how it is expected to operate.

^{9/} In this regard, Adams notes that, through deposition of an employee of Station WTVE(TV), Adams has learned that Root was available to confer with station staffmembers, and that he did in fact confer with at least one staffmember on multiple occasions.

McCracken and Linton, offer no detailed information concerning how Root came to be associated with RBI and its station or how he performs his activities in connection with the station. ^{10/} And even though Root is Parker's "special assistant", RBI has failed to provide any statement from Parker concerning the scope of Root's activities.

15. According to the Commission, the focus of the "past broadcast record" element of the standard comparative issue is whether such a record gives "some indication of unusual performance in the future." Comparative Policy Statement, 5 RR2d at 1912. In the instant case, we have a licensee whose dominant principal, Parker, has twice been found to have engaged in fraud or deceit before the Commission. That alone is unusual, and strongly indicative of a lack of reliability. ^{11/} But in addition, we have Parker associating himself, and the station, with two individuals who have been held to have engaged in fraud or gross abuses of the Commission's processes. One of those two individuals -- an individual who forged an ALJ's signature and

^{10/} Ironically, the primary detail offered by Declarant Linton is the fact that Linton "has observed Mr. Root's performance to ensure that his activities for RBI did not amount to the practice of law". RBI Opposition, Exhibit A, p. 2. Linton's concern on this point presumably arises from the fact that Root was disbarred from the practice of law.

^{11/} Over and above the two adjudications in Mt. Baker and Religious Broadcasting, there is also the matter of Parker's less than candid and forthright disclosures of those prior adjudications -- including "disclosures" which were included in the transfer of control application through which Parker was approved as an RBI principal. The Bureau, in its comments in support of Adams's Motion to Enlarge herein, stated that Parker's disclosures did "not fairly disclose all relevant facts" and were "clearly insufficient". Bureau Comments at 5.

falsified other official documents, as well as engaging in other extensive fraud -- is currently serving as "special assistant" to RBI's president!

16. These circumstances are unquestionably "unusual", reflect "unusually poorly" on RBI, and certainly raise questions concerning the reliability and possible future performance of RBI. RBI's Opposition consists largely of "so what?", acknowledging the underlying facts but claiming that those facts are immaterial. By taking that approach, RBI fails to provide any demonstration that, regardless of those facts, RBI can be relied upon. Under these circumstances, Adams has met its burden of presenting a Threshold Showing of unusually poor broadcast record, and Adams should be permitted to adduce evidence as to these matters under the already-designated standard comparative issue.

Respectfully submitted,

/s/


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September 27, 1999

CERTIFICATE OF SERVICE

I hereby certify that, on this 27th day of September, 1999, I caused copies of the foregoing "Reply of Adams Communications Corporation to RBI Opposition to Adams's 'Threshold Showing of Unusually Poor Broadcast Record'" to be hand delivered (as indicated below), addressed to the following:

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